

## § 171.1

## 17 CFR Ch. I (4–1–11 Edition)

- 171.42 Notice of a final decision of the National Futures Association in a member responsibility action.
- 171.43 Petition for a stay of the effective date of a final decision of the National Futures Association in a member responsibility action.
- 171.44 Notice of appeal.
- 171.45 General procedures.
- 171.46 Standards of review.

### Subpart E—Delegation of Functions

- 171.50 Delegation to the General Counsel.

AUTHORITY: 7 U.S.C. 4a, 12a and 21, unless otherwise noted.

SOURCE: 55 FR 41068, Oct. 9, 1990, unless otherwise noted.

### Subpart A—General Provisions

#### § 171.1 Scope of rules.

(a) *Matters included.* Unless specifically excluded by subsection (b), this part governs review by the Commission, pursuant to sections 17(h), (i) and (o) of the Commodity Exchange Act (“Act”), as amended, of any disciplinary action, membership denial action, registration action or member responsibility action taken by the National Futures Association or any registered futures association. Unless specifically indicated, references in this part to the National Futures Association shall also include any other registered futures association.

(b) *Matters excluded.* The Commission will not review under these rules the following decisions by the National Futures Association:

(1) A decision in a disciplinary action if the party aggrieved by the decision knowingly failed to pursue the right to appeal an adverse decision to the Appeals Committee of the National Futures Association and there are no extraordinary circumstances that otherwise warrant Commission consideration of the aggrieved party’s appeal;

(2) A decision in an arbitration action brought pursuant to section 17(b)(10) of the Act or any rule of the National Futures Association;

(3) Suspension of a member based solely on that member’s failure to pay National Futures Association dues;

(4) A decision to disqualify any member for service on the National Futures Association Board of Directors, Busi-

ness Conduct Committees, Hearing Committee or arbitration panels pursuant to the standards for service adopted by the National Futures Association to implement Commission rule 1.63;

(5) Suspension of a member or a person associated with a member based solely on that person’s failure to pay an arbitration award or a settlement agreement resulting from an arbitration action brought pursuant to section 17(b)(10) of the Act or rules and regulations of the National Futures Association, or a settlement agreement resulting from a mediation proceeding sponsored by the National Futures Association, unless there are extraordinary circumstances that involve something more than the ministerial application of a predetermined sanction, or raise a colorable claim that the National Futures Association has acted arbitrarily.

(c) *Appeals from excluded decisions.* If the Deputy General Counsel for Opinions or his delegate determines that a notice of appeal submitted to the Commission is from a decision that is excluded from review under this part, he may strike it and order it returned to the aggrieved party who submitted it.

(d) *Applicability of these part 171 rules.* Unless otherwise ordered, these rules will apply in their entirety to all appeals and matters relating thereto filed on or after October 31, 1990. Any part 171 proceeding commenced prior to October 31, 1990 continues to be governed by the procedures established in former subpart F of part 3 of the Commission’s regulations, if applicable, or by the procedures established for that proceeding by Commission order. Parties to any proceeding pending on October 31, 1990 may, within 30 days after October 31, 1990 by written stipulation executed by all parties, and filed with the Proceedings Clerk before the Commission’s final decision is rendered, elect to have the matter governed by the provisions of these part 171 rules.

[55 FR 41068, Oct. 9, 1990, as amended at 70 FR 2352, Jan. 13, 2005]

#### § 171.2 Definitions.

For purposes of this part:

(a) *Commission decisional employee* includes any member of the Commission staff who participates in, or may be

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reasonably expected to participate in, the decisionmaking process in any proceeding under this part. It does not include Commissioners or members of their personal staff.

(b) *Disciplinary action* includes any proceeding brought by the National Futures Association to enforce its rules that may result in expulsion, suspension, censure, bar from association with a member, fine in excess of \$100 or any comparable sanction being imposed on a member or a person associated with a member.

(c) *Ex parte communication* shall include any communication, whether written or oral, which is both (1) not preceded by reasonable notice to all parties to a proceeding, and (2) not made on the public record. It shall not include requests made to the Commission's Opinions Section or Office of Proceedings for status reports or for an interpretation of these rules.

(d) *Final Decision* means the decision that terminates the proceeding before the National Futures Association on the action that is the subject of the notice of appeal filed with the Commission.

(e) *To mail* means to place in the United States mail (or to deliver to an overnight delivery service of established reliability) a properly addressed and post-paid document. Unless otherwise provided, documents filed and served by mail must be sent by no less expeditious means than first class United States mail.

(f) *Member* includes any person admitted to membership by the National Futures Association.

(g) *Member Responsibility Action* includes any action in which, based on a finding by the National Futures Association that there is reason to believe that summary action is necessary to protect the commodity futures markets, customers or other members of the association, a member or person associated with a member may be summarily suspended from membership or association with a member, required to restrict operations or otherwise directed to take remedial action.

(h) *Membership denial action* includes any proceeding brought by the National Futures Association to (1) determine whether an applicant should be

admitted to membership or be permitted to be associated with a member, (2) determine whether an applicant should be admitted to membership or be permitted to be associated with a member on a conditional basis, or (3) determine whether to revoke or restrict the membership or association status of any person who is a member or is associated with a member.

(i) *Party* includes any person who has been the subject of a disciplinary action, membership denial action, or registration action by the National Futures Association; the National Futures Association itself; any person granted permission to participate as a party pursuant to § 171.27 of these rules; and any Division of the Commission that files a Notice of Appearance pursuant to § 171.28 of these rules.

(j) *Person associated with a member* includes any person permitted to register as an associate of a member by the National Futures Association.

(k) *Record of the proceeding* shall include the order appealed from, the findings or report on which the order is based, the pleadings, evidence and proceedings before the National Futures Association decisionmaker and a copy of any rule of the National Futures Association that is material to the order.

(l) *Registration action* includes any proceeding brought by the National Futures Association, pursuant to authority delegated by the Commission, to grant, condition, deny, suspend, restrict, or revoke the registration of any person.

(m) *Rule of the National Futures Association* includes any article of incorporation, bylaw, rule, regulation, resolution or written interpretation of stated policy of the National Futures Association.

### § 171.3 Business address; hours.

The principal office of the Commission is located at Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. It is open each day, except Saturdays, Sundays, and legal public holidays, from 8:15 a.m. until 4:45 p.m., eastern standard time or eastern daylight savings time, whichever is currently in effect in Washington, DC.

[55 FR 41068, Oct. 9, 1990, as amended at 60 FR 49336, Sept. 25, 1995]